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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,814	03/03/2004	Hua Zhang	88265-7697	1494

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BELL, BOYD & LLOYD LLP
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CHICAGO, IL 60690

EXAMINER

LEFF, STEVEN N

ART UNIT	PAPER NUMBER
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1761

NOTIFICATION DATE	DELIVERY MODE
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05/17/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary

Application No.

10/790,814

Applicant(s)

ZHANG ET AL.

Examiner

Steven Leff

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- The rejection of Peleg (5247149) is withdrawn with respect to claims 1, 3-11 and 19-20.
- The double patenting rejection has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1-4, 9, and 11-19 remain rejected under 35 U.S.C. 102(b) as being anticipated by De La Cruz (5416304). The references and rejections are taken as cited in the previous Office action mailed December 1st, 2006.

Applicant's arguments filed March 1st, 2007 have been fully considered but they are not persuasive.

With respect to claim 1 and applicant's argument that De La Cruz fails to teach "a heating attachment comprising a cradle configured for attaching a shield of microwave-reflective material to a container" as required by amended claim 1. It is noted that the claim teaches a cradle which is "configured" for attaching, where De La Cruz positively teaches that the device surrounds the container (fig. 3), thus positively teaching "a cradle configured for attaching a shield of microwave-reflective material to a container". It is noted that applicant argues that the device of De La Cruz is not configured for attaching to a container, however the cradle is not configured for attaching to a container, but configured to attaching to a container "in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom to inhibit or prevent reuse of the heating

attachment”, thus reciting specifically what the cradle is configured to accomplish, as is taught by De La Cruz.

With respect to applicants argument that De La Cruz fails to teach that “the heating attachment sufficiently surrounds the container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed there from,” it is noted that De La Cruz teaches a “frustoconical shape” (col. 5 line 20+), and further teaches that the heating device includes a “piece of adhesive tape” for joining the ends of the device. Therefore, due to the frustoconical shape the device would capture the container within and further due to the larger diameter of the container with respect to the diameter of the top opening of the heating device as depicted in figure 3, the heating device would need to be removed from the container by opening the heating device, i.e. by tearing apart the adhesive tape which joins the two ends of the heating device. It is further noted that the claim contains the phrase “promotes breakage” where an increased size of the container with respect to the heating device would positively “promote breakage” inhibiting reuse.

Regarding applicant’s argument that De La Cruz teaches a “container that comprises microwave-reflective material”, as opposed to the device being attached to “the container in an operative association...” It is noted that De La Cruz teaches that the container comprises a microwave-reflective material with respect to figures 13-17, however the rejection of record, with regard to De La Cruz, is relied upon with respect to figures 1-4, which positively teach “a cradle for attaching a microwave-reflective material to a container in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom to inhibit or prevent reuse of the heating attachment” as was set forth in the previous Office action.

- Claims 1, 3-5, 7-11, and 14-20 remain rejected under 35 U.S.C. 102(b) as being anticipated by McGeehins (4763790). The references and rejections are taken as cited in the previous Office action mailed December 1st, 2006.

Applicant's arguments filed March 1st, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments that McGeehins fails to teach a microwave-reflective material, it is noted that McGeehins states on column 1 line 63 that the device is for use within a microwave.

With respect to applicant's arguments that McGeehins fails to teach that "the heating attachment sufficiently surrounds the container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom," it is noted that the first Office action set forth clear reasons why the instant claims are rejected over the prior art with regard to this limitation. Regarding the argument that the cradle of the present claims receives a container into an interior recess, it is noted that the device of the prior art is a single piece of material with an open top. Therefore, placing the container in the device, through the top would positively meet the limitation that the device "sufficiently surrounds the container in operative association to capture the container."

Further, McGeehins teaches that the device surrounds the peripheral wall of the container such that the top edges of the device are folded over the rim of the container. It is noted that the cradle of the present claims "folds" over the rim of the container, just as McGeehins. With respect to applicant's argument that the top of the device may be simply unfolded to remove the container, it is noted once again that the claim states to promote breakage of the device in order to inhibit the reuse thereof. Therefore McGeehins positively teaches this limitation due to the fact that in order to remove the container from the heating device of McGeehins, one must first remove the rim engaging part, which promotes breakage of the device thus inhibiting reuse of the device due to the fact that the device may be ripped during removal of the container.

- Claims 1-20 remain rejected under 35 U.S.C. 102(b) as being anticipated by Zhang (20030189042). The references and rejections are taken as cited in the previous Office action mailed December 1st, 2006.

Applicant's arguments filed March 1st, 2007 have been fully considered but they are not persuasive.

With respect to applicant's argument that "Zhang fails to disclose or suggest a heating attachment that sufficiently surrounds a container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom", it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Therefore Zhang positively teaches that the heating attachment sufficiently surrounds a container "in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom to inhibit or prevent reuse of the heating attachment".

Terminal Disclaimer

The terminal disclaimer filed on March 1, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Application serial No. 10/118033, now issued U.S. Patent No. 6777655, has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SL


KEITH HENDRICKS
PRIMARY EXAMINER